

AMENDED IN SENATE AUGUST 17, 2009

AMENDED IN SENATE JUNE 11, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 221

**Introduced by Assembly Member Portantino
(Coauthors: Assembly Members Fuentes and Jeffries)**

February 4, 2009

An act to amend ~~Sections 120871 and~~ *Section* 120917 of the Health and Safety Code, relating to public health, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 221, as amended, Portantino. HIV testing: skin punctures.

Existing law provides for various programs relating to treatment of persons with the human immunodeficiency virus (HIV) and the acquired immunodeficiency syndrome (AIDS).

~~Existing law requires the State Department of Public Health to authorize the establishment of training programs for counselors for publicly funded HIV testing programs, by community-based, nonprofit organizations meeting prescribed requirements. Existing law requires the participating community-based organizations to follow curriculum content and design for these training programs that is approved by the department.~~

~~This bill would require the curriculum content to include training in universal infection control precautions and rapid HIV test proficiency, as specified.~~

Existing law permits the Office of AIDS in the department to participate in a rapid HIV test research program conducted with the federal Centers for Disease Control and Prevention.

~~This bill would repeal the authorization for the Office of AIDS to participate in a rapid HIV test research program conducted with the federal Centers for Disease Control and Prevention~~ *this authority.*

Existing law also authorizes HIV counselors trained by the office to perform skin punctures for purposes of withdrawing blood for HIV test purposes, if the HIV counselor meets prescribed requirements. One of these requirements is that the HIV counselor must hold a valid certification as a phlebotomist technician by the department.

~~This bill would exempt an HIV counselor who is trained in accordance with training requirements established by the department pursuant to the above-mentioned training program curriculum requirements, and who works under a licensed physician and surgeon, and who is trained in rapid HIV test proficiency and universal infection control precautions, as specified,~~ from the requirement that he or she hold a valid certification as a phlebotomist technician.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The United States Centers for Disease Control and
- 4 Prevention estimates that HIV incidence is 40 percent higher than
- 5 previously thought.
- 6 (b) The Office of AIDS in the State Department of Public Health
- 7 estimates that between 30,000 and 40,000 Californians are unaware
- 8 that they are HIV-positive and, therefore, are not receiving
- 9 appropriate HIV treatment and are possibly jeopardizing their own
- 10 health, and that of their sex partners and intravenous drug-using
- 11 partners.
- 12 (c) It is therefore in the interest of the people of the State of
- 13 California to take steps to ensure that people have greater access
- 14 to HIV testing.

1 SEC. 2. ~~Section 120871 of the Health and Safety Code is~~
2 ~~amended to read:~~

3 ~~120871. (a) The department shall authorize the establishment~~
4 ~~of training programs throughout the state for counselors for~~
5 ~~publicly funded HIV testing programs. These training programs~~
6 ~~shall be conducted by community-based, nonprofit organizations~~
7 ~~with demonstrated expertise in providing free, anonymous, or~~
8 ~~confidential HIV testing services. The programs may be offered~~
9 ~~at flexible times, so as to facilitate the training of volunteer and~~
10 ~~part-time counselors.~~

11 ~~(b) All participating community-based organizations shall follow~~
12 ~~curriculum content and design approved by the department for~~
13 ~~training programs administered pursuant to this section. The~~
14 ~~curriculum content shall include training in both of the following:~~

15 ~~(1) Universal infection control precautions, consistent with best~~
16 ~~infection control practices established by the Division of~~
17 ~~Occupational Safety and Health in the Department of Industrial~~
18 ~~Relations and the federal Centers for Disease Control and~~
19 ~~Prevention.~~

20 ~~(2) Rapid HIV test proficiency for skin puncture blood tests and~~
21 ~~oral swab tests.~~

22 ~~(c) All counselors trained in programs authorized by this section~~
23 ~~shall be subject to existing state and local testing and successful~~
24 ~~completion of training.~~

25 ~~(d) All costs associated with training programs administered~~
26 ~~pursuant to this section shall be absorbed by participating~~
27 ~~community-based organizations. This section shall not be construed~~
28 ~~to require or prohibit the funding of any training program~~
29 ~~administered pursuant to this section by the department, or by any~~
30 ~~local government administering a training program for HIV~~
31 ~~counselors.~~

32 ~~(e) This section shall not be construed to prohibit or otherwise~~
33 ~~restrict community-based organizations from participating in~~
34 ~~existing local training programs.~~

35 ~~(f) This section shall not be construed to certify an HIV~~
36 ~~counselor as a phlebotomy technician or a limited phlebotomy~~
37 ~~technician, or to fulfill any requirements for certification as a~~
38 ~~phlebotomy technician or a limited phlebotomy technician, unless~~
39 ~~the HIV counselor has otherwise satisfied the certification~~

1 ~~requirements imposed pursuant to Section 1246 of the Business~~
2 ~~and Professions Code.~~

3 ~~SEC. 3.~~

4 *SEC. 2.* Section 120917 of the Health and Safety Code is
5 amended to read:

6 120917. (a) An HIV counselor who is trained by the Office
7 of AIDS and working in an HIV counseling and testing site funded
8 by the department through a local health jurisdiction, or its agents,
9 may do all of the following:

10 (1) Perform any HIV test that is classified as waived under the
11 federal Clinical Laboratory Improvement Act (CLIA) (42 U.S.C.
12 Sec. 263a and following) if all of the following conditions exist:

13 (A) The performance of the HIV test meets the requirements of
14 CLIA and, subject to subparagraph (B), Chapter 3 (commencing
15 with Section 1200) of Division 2 of the Business and Professions
16 Code.

17 (B) Notwithstanding Section 1246 of the Business and
18 Professions Code, an HIV counselor may perform skin punctures
19 for the purpose of withdrawing blood for HIV testing, upon specific
20 authorization from a licensed physician and surgeon, provided that
21 the person meets both of the following requirements:

22 (i) He or she works under the direction of a licensed physician
23 and surgeon.

24 ~~(ii) He or she has been trained in accordance with training~~
25 ~~requirements established by the department pursuant to subdivision~~
26 ~~(b) of Section 120871. An HIV counselor who has been certified~~
27 ~~using a curriculum pursuant to subdivision (b) of Section 120871~~
28 ~~prior to the inclusion of the curriculum content required in~~
29 ~~paragraphs (1) and (2) of that subdivision and who will administer~~
30 ~~rapid HIV skin puncture tests shall obtain training in the curriculum~~
31 ~~content required by those paragraphs within two years of the date~~
32 ~~that the department approves a curriculum that meets the~~
33 ~~requirements of those paragraphs. The HIV counselor shall not,~~
34 ~~unless also certified as a limited phlebotomist technician, perform~~
35 ~~a skin puncture pursuant to this section until he or she has~~
36 ~~completed the training for the new curriculum content.~~

37 *(ii) He or she has been trained in both rapid HIV test proficiency*
38 *for skin puncture blood tests and oral swab tests and in universal*
39 *infection control precautions, consistent with best infection control*
40 *practices established by the Division of Occupational Safety and*

1 *Health in the Department of Industrial Relations and the federal*
2 *Centers for Disease Control and Prevention.*

3 (C) The person performing the HIV test meets the requirements
4 for the performance of waived laboratory testing pursuant to
5 subdivision (a) of Section 1206.5 of the Business and Professions
6 Code. For purposes of this subdivision and subdivision (a) of
7 Section 1206.5 of the Business and Professions Code, an HIV
8 counselor trained by the Office of AIDS shall be “other health care
9 personnel providing direct patient care” as referred to in paragraph
10 (12) of subdivision (a) of Section 1206.5 of the Business and
11 Professions Code.

12 (D) The patient is informed that the preliminary result of the
13 test is indicative of the likelihood of HIV infection and that the
14 result must be confirmed by an additional more specific test, or,
15 if approved by the ~~FDA~~ *federal Centers for Disease Control and*
16 *Prevention* for that purpose, a second different rapid HIV test.
17 Nothing in this subdivision shall be construed to allow an HIV
18 counselor trained by the Office of AIDS to perform any HIV test
19 that is not classified as waived under the CLIA.

20 (2) Notwithstanding Sections 1246.5 and 2053 of the Business
21 and Professions Code, order and report HIV test results from tests
22 performed pursuant to paragraph (1) to patients without
23 authorization from a licensed health care professional or his or her
24 authorized representative. Patients with indeterminate or positive
25 test results from tests performed pursuant to paragraph (1) shall
26 be referred to a licensed health care provider whose scope of
27 practice includes the authority to refer patients for laboratory
28 testing for further evaluation.

29 ~~(b) Notwithstanding any other provision of law, an HIV~~
30 ~~counselor acting in accordance with this section who successfully~~
31 ~~completes the HIV counselor training shall be deemed to have~~
32 ~~demonstrated sufficient literacy and comprehension to advance to~~
33 ~~the limited phlebotomy technician training and may substitute~~
34 ~~successful completion of the HIV counselor curriculum for the~~
35 ~~requirement for a high school diploma or General Education~~
36 ~~Development (GED) equivalent for a limited phlebotomy~~
37 ~~technician, as defined in Section 1029.116 of Title 17 of the~~
38 ~~California Code of Regulations pursuant to Section 1246 of the~~
39 ~~Business and Professions Code.~~

1 (b) An HIV counselor who has been certified pursuant to
2 subdivision (b) of Section 120871 prior to September 1, 2009, and
3 who will administer rapid HIV skin puncture tests shall obtain
4 training required by clause (ii) of subparagraph (B) of paragraph
5 (1) of subdivision (a) prior to September 1, 2011. The HIV
6 counselor shall not, unless also certified as a limited phlebotomist
7 technician, perform a skin puncture pursuant to this section until
8 he or she has completed the training required by that clause.

9 (c) An HIV counselor who meets the requirements of this section
10 with respect to performing any HIV test that is classified as waived
11 under the CLIA may not perform any other test unless that person
12 meets the statutory and regulatory requirements for performing
13 that other test.

14 (d) This section shall not be construed to certify an HIV
15 counselor as a phlebotomy technician or a limited phlebotomy
16 technician, or to fulfill any requirements for certification as a
17 phlebotomy technician or a limited phlebotomy technician, unless
18 the HIV counselor has otherwise satisfied the certification
19 requirements imposed pursuant to Section 1246 of the Business
20 and Professions Code.

21 ~~SEC. 4.~~

22 SEC. 3. This act is an urgency statute necessary for the
23 immediate preservation of the public peace, health, or safety within
24 the meaning of Article IV of the Constitution and shall go into
25 immediate effect. The facts constituting the necessity are:

26 Because HIV screening is so critical to containing the AIDS
27 epidemic, and therefore, persons who can administer rapid HIV
28 testing must be employed as soon as possible, it is necessary that
29 this act go into immediate effect.